

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of	)	
	)	
Petition for Rulemaking to Amend	)	MB Docket No. 12-121
The Commission's Over The Air	)	
Reception Device ("OTARD") Rules	)	

**COMMENTS OF THE NATIONAL ASSOCIATION OF  
TELECOMMUNICATIONS OFFICERS AND ADVISORS, THE UNITED STATES  
CONFERENCE OF MAYORS, THE NATIONAL LEAGUE OF CITIES, AND THE  
NATIONAL ASSOCIATION OF COUNTIES**

**I. INTRODUCTION**

The National Association of Telecommunications Officers and Advisors ("NATOA"),<sup>1</sup>  
the United States Conference of Mayors ("USCM"),<sup>2</sup> the National League of Cities ("NLC"),<sup>3</sup>

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<sup>1</sup> NATOA is a national trade association that promotes local government interests in communications, and serves as a resource for local officials as they seek to promote communications infrastructure development.

<sup>2</sup> The USCM is the official nonpartisan organization of cities with populations of 30,000 or more. There are 1,192 such cities in the country today. Each city is represented in the Conference by its chief elected official, the mayor.

<sup>3</sup> The NLC serves as a resource to and an advocate for the more than 19,000 cities, villages, and towns it represents.

and the National Association of Counties (“NACo”)<sup>4</sup> submit these comments in opposition to the Petition for Rulemaking (“Petition”) filed by the Satellite Broadcasting and Communications Association (“SBCA”), DIRECTV, LLC, and DISH Network L.L.C. (collectively, “Petitioners”), released May 8, 2012, in the above-entitled proceeding. We strongly support the comments filed by the City of Philadelphia in this proceeding and urge the Commission to deny the Petition.

## **II. ARGUMENT**

### **A. The Over-the-Air Reception Device (“OTARD”) Rule Needs No Clarification**

The OTARD rule<sup>5</sup> has been in place since October 1996. It prohibits restrictions that “impair” the installation, maintenance or use of antennas to receive video programming.

Generally, the rule prohibits restrictions that: 1) unreasonably delay or prevent installation, maintenance or use; 2) unreasonably increase the cost of installation, maintenance or use; or 3) preclude reception of an acceptable quality signal.

Over the years, the rule has been amended twice. In 1999, the rule became applicable to rental property where the renter has an exclusive use area, such as a balcony or patio, and, in 2001, it became applicable to customer-end antennas that receive and transmit fixed wireless signals.

As the Commission itself points out, “the rule applies to individuals who place antennas that meet size limitations on property that they own or rent and that is within their *exclusive use or control* . . . . The rule allows *local governments* . . . to enforce restrictions that do not impair

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<sup>4</sup> NACo represents county governments, and provides essential services to the nation’s 3,068 counties.

<sup>5</sup> 47 C.F.R. § 1.4000.

the installation, maintenance or use . . . of antennas . . . , as well as restrictions needed for safety or historic preservation,” even if they “impair” video programming services.<sup>6</sup> (Emphasis added.)

However, the rule is not applicable to “common areas that are owned by a landlord, a community association, or jointly by condominium or cooperative owners. Common areas may include the roof or exterior wall of a multiple dwelling unit. Therefore, restrictions on antennas installed in or on such common areas are enforceable.”<sup>7</sup> Even the SBCA’s fact sheet on OTARD acknowledges that the rule only protects dish antenna placement if it is within the resident’s “*exclusive use area*” or if the dish is “*wholly*” within the user’s exclusive use area.<sup>8</sup> Nowhere on its fact sheet does the SBCA claim that state and local governments cannot regulate the placement of such devices located in common areas.

Contrary to the Petitioners’ position, the OTARD rule requires no clarification. All parties, including tenants, landlords, management companies, satellite service providers, and state and local governments, know what sort of regulations are prohibited by the rule and where those regulations are permissible. Petitioners’ argument that the Commission “left unanswered questions” concerning the proper scope of the rule and the assertion that the Commission “inadvertently” permits state and local governments regulatory authority over the placement of these devices in common areas is nothing more than a backdoor attempt to bolster SBCA’s position in its current dispute with the City of Philadelphia. Indeed, a review of SBCA’s Petition for Declaratory Ruling in that proceeding never once raises the argument that the Commission “inadvertently” got it wrong when it declined to expand the OTARD rule to common areas.

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<sup>6</sup> See Federal Communications Commission, *Guide/Over-the-Air Reception Devices Rule*, available at <http://www.fcc.gov/guides/over-air-reception-devices-rule#links>.

<sup>7</sup> *Id.*

<sup>8</sup> See SBCA, *Know Your Rights and the Rules About Satellite Services*, available at [http://www.sbca.com/dish-satellite/SBCA\\_OTARD\\_flyer.pdf](http://www.sbca.com/dish-satellite/SBCA_OTARD_flyer.pdf).

## **B. Local Governments Have the Duty to Protect the Quality of Life**

Contrary to the Petitioners' argument, the Commission did not, via the OTARD rule, "give" government entities the ability to "dictate the use of common areas." What Petitioners fail to acknowledge is that the OTARD rule carves out an *exemption* to long-standing state and local government zoning authority – authority that necessarily extends onto private property. For example, the ability of localities to enforce basic building code regulations.<sup>9</sup> The Commission crafted its OTARD rule to ensure the availability of various video programming services and to encourage fair competition in the marketplace, carefully balancing the needs of consumers, industry, and government by limiting its applicability to areas of *exclusive use or control*. The rule is one of limited preemption that preserves existing state and local zoning authority in common areas since there has been no showing that further preemption is required to carry out the goal of increased competition and availability of video programming services.

Petitioners now seek to undermine this authority by arguing that the OTARD rule should be amended, citing only one example to support their position – an ordinance recently enacted by the City of Philadelphia. But as we stated in an earlier filing, the City's ordinance seeks to minimize the visual impact of dish antennas by carefully balancing the legislative goals of preserving the appearance – and property values – of all its neighborhoods with the interests of those seeking to obtain access to satellite services.<sup>10</sup> A review of the City's ordinance reveals that, while it does provide for a slightly stricter placement preference for dishes in common areas, it does not impair the viewer's ability to receive, select, and view over-the-air video

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<sup>9</sup> See Comments of the City of Philadelphia, MB Docket No. 12-121, at 6 (June 7, 2012).

<sup>10</sup> See Response of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the National League of Cities, and the United States Conference of Mayors, No. CSR-8541-0 (December 21, 2011).

programming signals. As such, there's simply no basis for the Commission to amend its long-standing rule.

### **III. CONCLUSION**

We urge the Commission to deny SBCA's Petition and uphold the authority of state and local governments to continue the regulation of satellite dish antennas in common areas.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "S. Traylor".

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